


**NORFOLK  
SOUTHERN**

Norfolk Southern Corporation  
Law Department  
Three Commercial Place  
Norfolk, Virginia 23510-2191

J. Gary Lane  
Senior General Attorney

Writer's Direct Dial Number  
(804) 629-2818

May 11, 1993  
RECORDATION NO. 18232  
FILED 1426

Mr. Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
12th and Constitution Avenue, N.W.  
Washington, D. C. 20423

MAY 12 1993 1-30 PM

MAY 12 1 29 PM '93  
MOTOR OPERATING UNIT

Dear Mr. Strickland:

In accordance with 49 U.S.C. § 11303 and the Commission's Rules, I submit herewith for recording with the Commission three (3) original counterparts, properly executed and acknowledged, of the document described below. I request that two (2) of the counterparts (bearing the Commission's stamped recordation data) be returned to the undersigned.

This document is a Conditional Sale Agreement, a "primary document", dated as of May 1, 1993.

The names and addresses of the parties to the primary document are as follows:

VENDOR: Norfolk and Western Railway Company  
Three Commercial Place  
Norfolk, VA 23510

VENDEE: Jefferson Smurfit Corporation  
(Containerboard Mill Division)  
1915 Wigmore Street  
Jacksonville, Florida 32201

The equipment covered by the document is generally described as follows:

<u>Number of Units</u>	<u>General Description</u>	<u>AAR Symbol</u>	<u>Identifying Number</u>
1	1,200 H.P. Model SW-1200 Diesel-Electric Locomotive	B-B	1230

The recordation fee of \$16.00 is enclosed. After recordation, please return two (2) of the original counterparts

of the document, stamped with the Commission's recordation data, to J. Gary Lane, Norfolk Southern Corporation, Three Commercial Place, Norfolk, Virginia 23510.

A short summary of the document for use in the index follows:

Conditional Sale Agreement dated as of May 1, 1993, between Norfolk and Western Railway Company, Three Commercial Place, Norfolk, Virginia 23510, as Vendor, and Jefferson Smurfit Corporation (Containerboard Mill Division), 1915 Wigmore Street, Jacksonville, FL 32201, as Vendee, covering one diesel-electric locomotive numbered 1230.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'J. Gary Lane', written in a cursive style.

J. Gary Lane

jgl  
encl.

**Interstate Commerce Commission**  
Washington, D.C. 20423

5/12/93

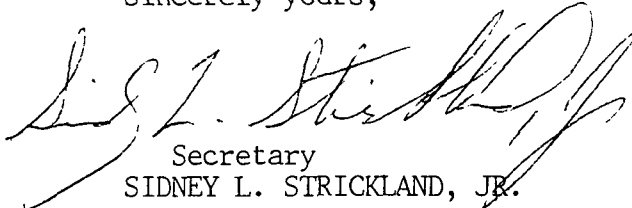
OFFICE OF THE SECRETARY

**J. Gary Lane**  
**Senior General Attorney**  
**Norfolk Southern Corporation**  
**Law Department**  
**Three Commercial Place**  
**Norfolk, VA. 23510**

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **5/12/93** at **1:30pm**, and assigned recordation number(s). **18232**

Sincerely yours,

  
Secretary  
SIDNEY L. STRICKLAND, JR.

Enclosure(s)

CONDITIONAL SALE AGREEMENT

MAY 12 1993 1:30 PM

INTERSTATE COMMERCE COMMISSION

THIS CONDITIONAL SALE AGREEMENT ("Agreement"), made and entered into as of this 1st day of May, 1993, by and between NORFOLK AND WESTERN RAILWAY COMPANY, with offices at Three Commercial Place, Norfolk, Virginia ("Seller"), and JEFFERSON SMURFIT CORPORATION (CONTAINERBOARD MILL DIVISION), with its office and mailing address at 1915 Wigmore Street, P.O. Box 150, Jacksonville, Florida 32201 ("Buyer"),

WITNESSETH, THAT:

WHEREAS, Seller owns the equipment more particularly described on Annex A hereto, which equipment no longer is necessary or useful in connection with Seller's business as a common carrier;

WHEREAS, Buyer desires to purchase from Seller said equipment "as is" and with all faults; and

WHEREAS, Seller is willing to sell to Buyer said equipment on the terms and conditions hereinafter set forth, reserving unto Seller the title thereto to secure payment of the purchase price thereof;

NOW, THEREFORE, for and in consideration of the mutual promises, undertakings and covenants hereinafter set forth, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Sale of Equipment. Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer, the property described on Annex A hereto, hereinafter called the "Equipment."

2. Delivery. The Equipment shall be delivered to Buyer in Jacksonville, Florida (on the tracks of Norfolk Southern Railway Company). On the Closing Date (hereinafter defined), the Equipment shall be deemed to be identified to this Agreement and Buyer will cause its authorized representative to execute and deliver to Seller a Certificate of Acceptance (in the form appended hereto as Annex B), evidencing that Buyer accepts delivery of the Equipment, as is and where is, pursuant to this Agreement; thereupon, the Equipment shall be deemed to have been delivered to Buyer pursuant to this Agreement. Notwithstanding anything to the contrary herein, Seller shall have no obligation to deliver the Equipment hereunder if, prior to the Closing Date (hereinafter defined) there is filed by or against the Buyer a petition for reorganization or bankruptcy under the Bankruptcy Act, as now constituted or as hereafter may be amended.

3. Purchase Price and Payment. The total purchase price of the Equipment shall be FORTY-ONE THOUSAND DOLLARS (\$41,000.00),

as specified in Annex A, which amount is referred to herein as the "Conditional Sale Indebtedness" and which shall be due and payable by Buyer to Seller in twelve (12) equal monthly installments of Three Thousand Four Hundred Sixteen Dollars and Sixty-Six Cents (\$3,416.66) each, the first such installment being due and payable on the Closing Date and each subsequent installment being due and payable as specified in Annex A. Buyer shall pay each installment of the Conditional Sale Indebtedness on or before the date it is due by certified or cashier's check payable to Seller delivered to Seller's Treasurer at 110 Franklin Road, S.E., Roanoke, Virginia 24042-0054. With respect to all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, Buyer will pay, to the extent legally enforceable, interest (computed on the basis of a 360-day year composed of twelve 30-day months) at the highest prime rate of interest of Morgan Guaranty Trust Company of New York in effect during the period of such delinquency.

The term "Closing Date" as used herein shall mean the later to occur of (i) the date the Equipment is delivered to Buyer and (ii) the date after this Agreement shall have been filed by Seller pursuant to 49 U.S.C. § 11303 as shall be fixed by mutual agreement of the Buyer and Seller but not later than three (3) business days after the date that this Agreement shall have been so filed.

After the Closing Date, Buyer promptly will pay all taxes and assessments of any kind which may be imposed upon the Equipment, upon the use or operation thereof, upon the earnings arising therefrom or upon Seller solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all taxes and assessments which might in any way affect Seller's title or result in a lien upon the Equipment. Without limiting the generality of the foregoing, Buyer shall be responsible for any and all sales, use, or other similar taxes which may be imposed by any jurisdiction on the Equipment, the transfer thereof or the transactions contemplated by this Agreement. If any such taxes and assessments, or other fees such as licenses, charges, fines or penalties shall have been charged or levied against Seller directly and paid by Seller, Buyer shall reimburse Seller immediately upon presentation of an invoice therefor.

4. Security Interest in the Equipment. Seller shall and hereby does retain the full legal title to and property in the Equipment, and Buyer hereby grants to Seller a purchase money security interest in the Equipment, until Buyer shall have made all the payments hereunder and shall have kept and performed all its agreements contained herein, notwithstanding the delivery of the Equipment to and the possession and use thereof by Buyer pursuant hereto. Such retention of title and property interest is solely to secure performance by Buyer of its obligations under this Agreement, and rights to possession and use shall be in Buyer, subject to such performance. Any and all additions to the

Equipment and any and all replacements of the Equipment and of the parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Section 6 hereof, when and only when Seller shall have been paid the full Conditional Sale Indebtedness, together with all other payments required hereby, and all Buyer's obligations herein contained shall have been performed by Buyer, all of Seller's right, title and interest in the Equipment shall pass and vest in Buyer, *ipso facto*, without further transfer or action on the part of Seller. However, Seller, if so requested by Buyer at that time, will execute a bill or bills of sale for the Equipment releasing its security interest therein and quitclaiming its title thereto and property therein to Buyer.

5. Indemnity. Buyer shall indemnify, defend and save harmless Seller, its affiliated corporations and its and their respective directors, officers, agents and employees, from and against all liabilities, damages, losses, claims, demands, payments, suits, actions, recoveries, legal expenses and judgments of every nature and description made, brought or recovered against, or incurred by, Seller (or such affiliated corporations, directors, officers, agents or employees), regardless of cause, arising in whole or in part, directly or indirectly, from or in connection with the performance or non-performance of obligations under this Agreement, any act or omission of Buyer, or Buyer's possession, use or operation of the Equipment, regardless of any negligence of Seller or any condition of or defect in the Equipment.

6. Maintenance and Repair. Buyer will, at Buyer's sole cost and expense, at all times after the date hereof maintain the Equipment or cause the Equipment to be maintained in good order and repair, ordinary wear and tear excepted. From and at all times after the date the Equipment is delivered to Buyer, Buyer assumes and shall have sole responsibility and risk of loss and damage with respect to the Equipment.

In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or permanently rendered unfit for use, from any cause whatsoever, or seized, confiscated, taken or requisitioned by condemnation or otherwise resulting in loss of possession by Buyer for a period of thirty (30) consecutive days, except requisition for use by the United States Government (such occurrences, "Casualty Occurrences"), on the next succeeding date for payment of an installment of the Conditional Sale Indebtedness, Buyer shall pay to Seller a sum equal to the Casualty Value (hereinafter defined) of such unit suffering a Casualty Occurrence as of the date of such payment

and shall file, or cause to be filed, with Seller a certificate setting forth the Casualty Value of such unit. Any money paid to Seller pursuant to this paragraph shall be applied to prepay without penalty or premium the Conditional Sale Indebtedness with respect to such unit suffering a Casualty Occurrence. In the event of the requisition for use by the United States Government of any unit of the Equipment, all of Buyer's obligations hereunder with respect to such unit shall continue to the same extent as if such requisition had not occurred.

Upon payment by Buyer to Seller of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in Buyer, without further transfer or action on the part of Seller, except that Seller, if requested by Buyer, will execute and deliver to Buyer, at the expense of Buyer, an appropriate quitclaim instrument confirming such passage to Buyer of all of Seller's right, title and interest in such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original purchase price thereof remaining unpaid on the date as of which such Casualty Value shall be determined.

7. Identifying Marks. Buyer shall, not later than fourteen (14) days after the Closing Date, remove (at its sole cost and expense) any and all ownership marking or other marking or stencilling ("Identifying Marks") on the Equipment referring to "Norfolk and Western Railway," "Norfolk Southern Railway," "NS," or "Norfolk Southern Corporation". However, Buyer will not change any identifying numbers on the Equipment without first having notified Seller of such change and without having filed or arranged for the filing of a statement of new numbers pursuant to 49 U.S.C. § 11303.

8. Insurance. Upon and after the Closing Date, Buyer shall insure the Equipment with a company or companies acceptable to Seller against such casualties and in such amount as Seller shall require. In the alternative, Buyer may cause the Equipment to be covered by its blanket insurance, of the type customary in the railroad industry, on all its rolling stock and locomotives and shall provide evidence, in form and substance satisfactory to Seller, of such coverage. Such insurance shall be for the benefit of Buyer and Seller as their interests may appear. Seller hereby is authorized to collect from the insurance company or companies any amount that may become due under any of such insurance, and Seller may apply the same to the obligations hereby secured.

9. Protection of Equipment. Buyer shall keep the Equipment free from any adverse security interests, liens or encumbrances

and in as good order and repair as when received (ordinary wear and tear excepted), shall not waste or destroy the Equipment or any part thereof, and shall not use the Equipment in violation of any applicable statute, ordinance or policy of insurance thereon, or in any manner inconsistent with the terms of this Agreement. Seller may examine and inspect the Equipment, wherever located, at any reasonable time or times.

10. Compliance with Laws and Rules. During the term of this Agreement, Buyer will comply in all respects (including without limitation with respect to the use, maintenance and operation of the Equipment) with (i) all laws of the jurisdictions in which Buyer's operations involving the Equipment may extend, (ii) the interchange rules of the Association of American Railroads and (iii) all rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any unit of the Equipment, Buyer will conform therewith at no expense to Seller.

11. Possession and Use. Buyer, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment under this Agreement, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

12. No Warranties. It is understood that the Equipment consists of used second-hand equipment and is sold as such. THE EQUIPMENT IS SOLD "AS IS," "WHERE IS," AND WITH ALL FAULTS. SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, RESPECTING THE EQUIPMENT OR ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, OR OTHERWISE. SELLER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY LIABILITY IN CONNECTION WITH THE CONDITIONAL SALE OF THE EQUIPMENT. IT IS FURTHER UNDERSTOOD AND AGREED THAT, IN NO EVENT, WILL SELLER BE LIABLE OR RESPONSIBLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND.

13. Assignment. Buyer shall not, without the prior written consent of Seller, sell, offer to sell, lease, assign or encumber, or transfer or otherwise dispose, or attempt or suffer such disposition of, this Agreement or the Equipment or any interest therein. The appointment of a receiver or receivers in equity or reorganization, or a trustee or trustees in bankruptcy or reorganization for Buyer or for its property shall not be deemed to be an unauthorized assignment if such receiver or receivers or trustee or trustees shall, pursuant to court order



or decree, in writing duly assume and agree to pay or perform all of the obligations and covenants of Buyer under this Agreement, in such manner that such obligations shall have the same status as obligations incurred by such receiver or receivers or trustee or trustees.

14. Reimbursement of Expenses. Seller may, in its sole discretion, discharge taxes, liens, or security interests or other encumbrances at any time levied or placed on the Equipment, pay for insurance thereon, order and pay for the repair, maintenance and preservation thereof, and pay any necessary filling or recording fees. Buyer shall reimburse Seller on demand for any payment made or any expenses incurred by Seller pursuant to this authorization.

15. Default. In the event that one or more of the following events of default shall occur and be continuing, namely:

- (a) Buyer shall fail to pay in full any sum payable by it when payment thereof shall be due hereunder; or
- (b) Buyer shall fail promptly to perform any of the obligations or covenants contained or referred to herein; or
- (c) Buyer, without the prior written consent of Seller as provided herein, shall make or suffer any sale, assignment, transfer or other disposition of any of its rights under this Agreement or the right of possession and use of the Equipment;

then at any time after the occurrence of such an event of default, Seller may, upon written notice to Buyer, declare the entire unpaid Conditional Sale Indebtedness in respect of the purchase price of the Equipment immediately due and payable without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness shall bear interest from the date of such declaration at the rate per annum specified in Section 3 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Seller shall thereupon be entitled to recover judgment for the entire unpaid balance of such indebtedness in respect of the purchase price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property, wherever situated, of Buyer.

16. Remedies. Upon the occurrence of an event of default hereunder, or at any time thereafter on such default not being cured, Seller at its option may, subject to applicable law, declare all of the obligations immediately due and payable and shall then have the remedies of a secured party under the Uniform

Commercial Code of the Commonwealth of Virginia. Such remedies shall include, without limitation, the right to take possession of the Equipment, and for that purpose Seller may, insofar as Buyer can give authority therefor, enter the premises on which the Equipment may be situated and remove the Equipment therefrom, Seller may require Buyer to make the Equipment available to Seller at a place to be designated by Seller that is reasonably convenient to both parties. Any expenses of retaking, holding, preparing for sale, selling or the like shall include Seller's reasonable attorneys' fees and legal expenses.

17. Waiver. No waiver by Seller of any default shall be effective unless in writing, nor shall any such waiver operate as a waiver of any other default or of the same default on a future occasion.

18. Further Assurances. Buyer covenants from time to time to do all such acts and to execute all such instruments of further assurance as it shall be reasonably requested by Seller to do or to execute for the purpose of fully carrying out and effectuating this Agreement and the intent hereof or, for the purpose of giving Seller assurances as to the future performance by Buyer under this Agreement.

19. Term of Agreement. This Agreement and the security interest in the Equipment created hereby shall terminate when and only when all of Buyer's obligations have been paid in full and when Buyer shall have duly performed all covenants and conditions hereof.

20. No Broker's Commission Due. Each party represents and warrants that it has not entered into any agreement with any broker relating to the sale or purchase of any of the Equipment described in or governed by this Agreement and that no broker's commission is due with respect to the transactions contemplated herein.

21. Notice. Unless otherwise specifically stated in this Agreement, any notice required or permitted under this Agreement shall be given in writing to the parties at their respective addresses specified below, or at such other address for a party as that party may specify by notice, by:

A. (i) Delivery in hand or by postage-prepaid, United States first class mail and

(ii) Registered or certified mail, return receipt requested, or

B. By Federal Express or other form of expedited mail that provides for delivery to the sender of a signed receipt, or

C. By telecopier.

Notices shall be sent to the parties at the following addresses:

- A. If to Seller: R. C. Steele, Jr., Assistant Vice President, Norfolk Southern Railway Company, 110 Franklin Road, S.E., Roanoke, VA 24042.
- B. If to Buyer: Dennis Sharpe, Jefferson Smurfit Corporation, 1915 Wigmore Street, P.O. Box 150, Jacksonville, Florida 32201.

22. Agreement and Amendment. No terms or conditions, other than those stated herein, and no agreement or understanding, oral or written, in any way purporting to modify these terms or conditions, shall be binding on either party unless hereafter made in writing stating that it is intended as a change to this Agreement and signed by an authorized representative of both parties. This Agreement embodies the entire understanding between the parties and all offerings, proposals, bids, negotiations, and representations, if any, made prior and with reference hereto are merged herein.

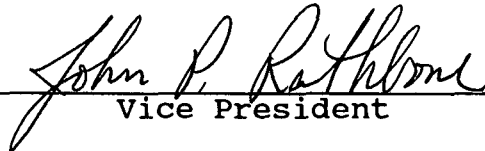
23. Governing Law. This Agreement shall be construed according to the applicable laws of the Commonwealth of Virginia, and, except as otherwise provided in this Agreement, Seller shall have all the rights and remedies afforded a secured party by Article 9 of the Uniform Commercial Code of Virginia.

Buyer acknowledges receipt of a copy of this instrument. Buyer further acknowledges that it has examined and inspected the Equipment as fully as Buyer desires.

IN WITNESS WHEREOF, the parties have executed this Agreement on this day first above written.

NORFOLK AND WESTERN RAILWAY COMPANY,  
Seller and Secured Party

By

  
Vice President

JEFFERSON SMURFIT CORPORATION  
(CONTAINERBOARD MILL DIVISION)  
Buyer and Debtor

By

  
Vice President

**ANNEX A  
TO  
CONDITIONAL SALE AGREEMENT**

**Description of Equipment:**

One (1) 1,200 H.P. Model SW-12 Diesel-Electric Switch Locomotive, numbered 1230; located at Norfolk Southern Railway tracks in Chattanooga, Tennessee. Purchase price: \$41,000.

**Payment Schedule:**

<u>Payment</u>	<u>Due Date</u>	<u>Amount</u>
1st	On Closing Date	\$3,416.66
2nd	30 days after Closing Date	3,416.66
3rd	60 days after Closing Date	3,416.66
4th	90 days after Closing Date	3,416.66
5th	120 days after Closing Date	3,416.66
6th	150 days after Closing Date	3,416.66
7th	180 days after Closing Date	3,416.66
8th	210 days after Closing Date	3,416.66
9th	240 days after Closing Date	3,416.66
10th	270 days after Closing Date	3,416.66
11th	300 days after Closing Date	3,416.66
12th	330 days after Closing Date	3,416.66

**TOTAL PAYMENTS**

**\$41,000.00**

ANNEX B  
TO  
CONDITIONAL SALE AGREEMENT

CERTIFICATE OF INSPECTION AND ACCEPTANCE

The undersigned, a duly authorized representative of Jefferson Smurfit Corporation ("Buyer"), for the purpose of inspecting and accepting Equipment which is to become subject to a Conditional Sale Agreement dated as of \_\_\_\_\_, 1993, (the "Equipment Agreement"), between the Buyer and Norfolk and Western Railway Company ("Seller"), hereby certifies that the following described unit of used railroad equipment:

Description:	1,200 H.P. Model SW-12 Diesel-Electric Switch Locomotive
Quantity:	One (1)
Identifying Marks:	NW 1230
Delivered at:	Norfolk Southern Railway tracks, Jacksonville, Florida

has been inspected and accepted pursuant to the Equipment Agreement by the undersigned on the date hereof.

\_\_\_\_\_  
Authorized Representative of  
Jefferson Smurfit Corporation

Dated: \_\_\_\_\_, 1993

COMMONWEALTH OF VIRGINIA )  
 ) to-wit:  
CITY OF NORFOLK )

I, Debra B. Cyburt, a Notary Public in and for the Commonwealth and City aforesaid, do hereby certify that John P. Rathbone, a Vice President of Norfolk and Western Railway Company, whose name as such is signed to the foregoing document, has this day personally appeared before me in my Commonwealth and City aforesaid and acknowledged that he is such Vice President of Norfolk Southern Railway Company, that he is authorized to execute the foregoing document on behalf of said corporation, and that said execution is the free and corporate act and deed of said corporation.

Given under my hand this 11<sup>th</sup>, day of May, 1993.

Debra B. Cyburt (Commissioned Dawson)  
Notary Public

My commission expires: January 31, 1995.

STATE OF Florida )  
 ) to-wit:  
COUNTY OF Duval )

I, Mary M. Shannon, a Notary Public in and for the State and County aforesaid, do hereby certify that Holmes H. Elder, Vice President of JEFFERSON SMURFIT CORPORATION, whose name as such is signed to the foregoing document, has this day personally appeared before me in my State and County aforesaid and acknowledged that he is such officer of Jefferson Smurfit Corporation, that he is authorized to execute the foregoing document on behalf of said corporation, and that said execution is the free and corporate act and deed of said corporation.

Given under my hand this 10<sup>th</sup> day of May, 1993.

Mary M. Shannon  
Notary Public

My commission expires:

MARY M. SHANNON  
NOTARY PUBLIC, STATE OF FLORIDA  
My commission expires Sept 27, 1995  
Commission No CC140723